Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
July 1, 2004	)	WC Docket No. 04-372
Annual Access Charge Tariff Filings	)	
	)	

OPPOSITION OF AT&T CORP. TO DIRECT CASE

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SUMMARY

In this investigation the Commission has asked NECA to provide information that will allow it to determine whether the revised rates NECA filed in July 2004, are unjust and unreasonable in violation of Section 201 of the Act because the methodology NECA uses is flawed and results in consistent overearnings, and because NECA has failed to make a mid-term correction in those rates to avoid overearnings for the 2003-2004 review period. The Commission also sought information relevant to NECA's charges and tariff provisions for entrance facilities.

Rather than providing the information requested by the *Designation Order*, NECA repeatedly asserts that the information the Commission seeks is irrelevant and that the Commission lacks jurisdiction over certain issues. NECA's claims are wrong. The information the Commission seeks about past-period forecasts and results is clearly relevant to determining whether there is a systemic bias in NECA's methodology that is likely to result in unreasonably high rates and overearnings for the 2003-2004 review period. This is precisely the type of inquiry the Commission conducted in reviewing the 1997 Annual Access Filing, as described in its *BFP Order*, and it is clearly relevant and lawful. Likewise, the Commission's inquiry into entrance facilities is squarely within its authority under Sections 204(a) and 205 of the Act.

NECA, unfortunately, has failed to provide much of the information that the Commission needs to dispel the concerns that NECA's methodology is flawed. NECA's failure to come forward with information in its possession and control that is highly relevant to the central issue in this investigation gives rise to an adverse inference that the information it has failed to provide

would not support its case, but rather, would confirm the other record evidence which shows that NECA will continue to overearn unlawfully unless its rates are adjusted.

Indeed, NECA readily concedes that it has been consistently overearning, based on data filed in its final Forms 492, which are the legally controlling measure of whether earnings are excessive. AT&T has conducted further analyses using NECA's own data, which shows that even with the adjustments NECA proposes, it would continue to overearn. Accordingly, the Commission should direct NECA to refile its rates with a mid-course adjustment and correction of its biased forecasts so that earnings for the 2003-2004 measuring period do not exceed the authorized return.

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Pursuant to the Commission's Order, DA-04-3020, released September 20, 2004,[1] AT&T Corp. ("AT&T") submits this Opposition to the Direct Case of National Exchange Carrier Association, Inc. ("NECA").

I. NECA's LEGAL OBJECTIONS TO THE SCOPE OF THIS INVESTIGATION ARE WITHOUT MERIT.

NECA poses several threshold legal objections to the scope of this investigation. First, NECA repeatedly asserts that the information the Commission has requested as to NECA's prior tariff filings is "irrelevant" to the 2004 filings under investigation here because it pertains to prior historical periods.[2] Second, NECA claims that the lawfulness of its entrance facility charges and tariff is beyond the scope of this investigation because Section 204(a) of the Act only authorized the Commission to investigate "new" or "revised" tariff charges and provisions, and these tariff rates and provisions were not

[1] Order Designating Issues for Investigation, July 1, 2004 Annual Access Charge Tariff Filings, WC Docket No. 04-372, DA 04-3020 (released September 20, 2004) ("*Designation Order*").

[2] Direct Case at 1, 2 and n. 4, 3, 5, 6, 29.

changed by the current filing.[3] NECA urges that for these reasons, this investigation should be terminated.[4] Both of NECA's claims are without merit.

NECA's claim that the historical data the Commission has requested (only a fraction of which NECA has provided) are "irrelevant" to a determination of the lawfulness of its July 2004 rates is simply wrong. NECA's argument is based on a mischaracterization of the purpose for which the Commission has requested this information. Contrary to NECA's assertions, the *Designation Order* does not state that prospective rates will be set to refund prior period overearnings, or indicate that it will make some impermissible use of these data, as NECA speculates.[5] Rather, as the *Designation Order* (para. 5) explains, the Commission is concerned that the rate development methodology that NECA has used in setting its July 2004 rates may be flawed and produce access rates that are unjust or unreasonable. The *Designation Order* further explains (paras. 11-13) that the Commission is trying to determine whether NECA's 2004 rates are actually targeted to realize an 11.25 percent return and whether the rate-of-return reports NECA currently files serve as reliable indications of whether or not rates are just and reasonable. While NECA has asserted that its actual returns are lower than those shown in its final reports to the Commission – which show consistent overearnings – it has not provided data to support that assertion. *Id.*, para. 12. Only NECA has the relevant data that the Commission needs to determine whether the reported overearnings, or NECA's unsupported protestations to the contrary, are accurate, *Id.*,

[3] Direct Case at 1-2, 23-24 and n.34, 28-29.

[4] Direct Case at 1-2.

[5] *See*, *e.g.*, Direct Case at 6, n. 18.

para. 3. Indeed, if NECA's protestations were true, it should welcome the opportunity to show that its reported earnings are overstated and thereby satisfy the Commission's legitimate concerns as to the level of its July 2004 rates.

NECA makes no showing that the use of historical data for the purpose of determining whether there is a systemic bias that may cause its newly filed rates to be inflated is somehow unlawful. To the contrary, such use of past-period data is supported both by past Commission precedent and common sense.

The type of analysis the Commission is undertaking here is precisely the same kind of analysis it undertook in 1997 when it suspended multiple interstate access tariffs where statistical analysis of past period data showed that the projections used in those tariffs to set prospective rates were likely to be inaccurate. *In the Matter of 1997 Annual Access Tariff Filings*, 13 FCC Rcd. 3815 (1997) (*"BFP Order"*). The Commission analyzed the difference between the LECs' 1997-98 forecasts for their per-line base factor portion (BFP) revenue requirement and the reported actual per-line BFP revenue requirements for each year between the tariff years 1991-92 and 1996-97 to see if there appeared a downward bias in the forecasts. The Commission then conducted statistical analyses to determine the likelihood of these results occurring by chance and whether the results were statistically significant. (*Id.*) Based on this analysis, the Commission concluded that six LECs had employed forecasts that reflected a consistent downward bias and ordered changes in the methodology used in setting the 1997-98 rates. The Commission's actions here similarly look to past period data to test the validity of the method used to set current period rates and are thus fully consistent with well-established practice and lawful under the Act.

It also makes eminently good sense. If a particular methodology has proven to generate demonstrably incorrect results in the past, it would be foolish to blindly follow that same practice in the future without fixing the flaws. That is all the Commission is undertaking to do here. Hence, NECA's objection to the use of past-period data for this purpose is unfounded.

NECA also claims that the Commission lacks authority under Section 204(a) to investigate the language in Section 6.1.3(A)(1) of NECA's Tariff F.C.C. No. 5, pertaining to entrance facilities. The short and dispositive answer to this claim is that the *Designation Order* (paras. 1 and 30) makes clear that the investigation of this tariff provision is being conducted pursuant to Section 205 of the Act, not Section 204(a). Section 205 is not limited to new or changed matter, but authorizes "the Commission on its own initiative" to investigate "any charge, classification, regulation or practice" and to prescribe "just, fair and reasonable" regulations. The Commission clearly has authority to investigate existing rates and regulations under Section 205, so NECA's assertion is unfounded.

NECA's claim as to the Commission's lack of authority under Section 204(a) is also unfounded with respect to Issue 2 -- whether NECA's entrance facility charges include inappropriate demand projections.[6] In its tariff filing, NECA in fact increased its entrance facility rates. *See* Transmittal No. 1030, 28th Revised page 17-10.1. The Commission is investigating whether the demand projections used in setting these changed rates is appropriate or includes services that were not ordered or provided.

[6] *Designation Order*, para. 24.

This investigation thus falls squarely within the Commission's Section 204(a) authority. NECA's claim (at 22-23), that the "real issue" is nevertheless the lawfulness of the terms and conditions in Section 6.1.3 (A)(1) of Tariff 5, is simply an incorrect assertion that is not supported by the facts. But even if that were the "real issue", as NECA claims, the Commission has cited its authority under Section 205 to conduct that investigation and it is indisputable that the Commission's Section 205 authority is not limited to new or changed matter and hence encompasses this issue.

II. THE ADDITIONAL DATA SUBMITTED BY NECA ARE INADEQUATE, DO NOT COMPLY WITH THE DESIGNATION ORDER AND, IN ALL EVENTS, FAIL TO ESTABLISH THAT ITS PROPOSED RATES ARE JUST AND REASONABLE.

The *Designation Order* (para. 13) notes that, "Reliable data are essential to the Commission's ability to conduct tariff reviews and investigations to enforce its rate-of-return prescription and to ensure just and reasonable rates." Thereafter, it specifies in the ensuing ten paragraphs, with great specificity, the information it requires to properly assess the lawfulness of NECA's proposed rates. Specifically, the Commission sought a better understanding of NECA's internal practice of allowing its members to true-up its costs 15 months after its pooled earnings were filed with the Commission as "final" FCC 492 reports. The Commission wanted to determine how these post-September 2004 adjustments could materially "affect the assignment of costs between the federal and state jurisdictions and whether only one category or several categories of access rates are affected"[7] and how these changes impact the final outcome of the FCC 492 reports filed in September.

Rather than providing the Commission with the data it needs, an inordinate portion of NECA's Direct Case is consumed with arguing that the information the Commission seeks is irrelevant and should not have been requested in the first place.[8] And, rather than complying to the full extent of its ability with the Commission's request, NECA has provided only a fraction of the information that it was directed to produce. NECA's inability to provide one or two particular items might be overlooked, but its overall compliance with the *Designation Order* is so poor that it fails to provide the Commission with the data it has indicated it needs to conduct this investigation. This leaves the Commission no alternative but to find NECA's rates unlawful and prescribe just and reasonable rates based on the data that are actually on the record.

For example, the Commission sought from NECA specific material adjustments that NECA made subsequent to the data it filed in September.[9] Rather than comply with the Commission's request, NECA proceeds to explain that these types of adjustments "typically represent only approximately 10% of total adjustments in any given year and would not provide a meaningful display of material adjustments."[10] And yet, the period between the submission of the final Form 492 in September to the end of the following December is precisely the period that the Commission must fully investigate to understand how adjustments made during this time period can influence the forecasting methodology to the extent claimed by NECA in its 2004

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[7] *Designation Order*, para. 20.

[8] *See*, e.g., Direct Case at 1, 2 and n.4, 3, 5, 6, 29.

[9] *Id. Designation Order*, para. 20.

[10] Direct Case at 18.

Annual Filing. The Commission needs to understand how 10% of total adjustments can produce results significantly different from the results reported in September. Instead, NECA has inundated the Commission with data representing material adjustments from the initial submission of cost studies prior to the final cost studies supporting its September Form 492 data. NECA ignored the Commission's request entirely that this "list of adjustments should not include data reflecting the submission of the initial cost study for the year in question."[11] Unfortunately, even these data are significantly flawed.

The Commission asked for the largest individual adjustments that made up 80% of the total true-ups. This information was provided on Exhibit 3A. However, rather than provide the Commission with a complete picture, NECA provided the Commission with "individual data adjustments that reduced pool earnings the most."[12] Material adjustments must include data adjustments that not only reduced pool earnings, but that also increased pool earnings as well. NECA has clearly failed to provide the Commission with unbiased or reliable data necessary for making an informed assessment of NECA's projected costs filed for the 2004-2005 tariff period.

NECA was also asked to provide the Commission with explanations of the adjustments made each year beginning with 1993. It was to provide explanations for the differences in the amounts that it reported in its September Form 492 and the final amounts, and to address whether there was any pattern evident in the true-ups, the reasons for any such pattern, and whether any such pattern could be expected to recur in subsequent years.[13] Instead of providing the Commission the yearly explanations it requested, NECA could only provide the Commission

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[11] *Designation Order*, para. 20.

[12] *Id.*, Confidential Material, Exhibit 3A, *see* Note.

[13] *Designation Order*, para. 16.

with data for the last 24 months found on Exhibit 3B. Unfortunately, the explanations did not contain associated true-up amounts to tie them back to Exhibit 3A that contained the initial settlement, final settlement and differences. While some explanations were more descriptive than others, large portions of the explanations are non-descriptive. Some companies identified as making up 80% of the true-ups found in Exhibit 3A could not be found on Exhibit 3B containing the explanations. AT&T could not find any data that would allow the Commission to determine a pattern for a predictable decline as claimed by NECA, even in the biased sampling provided. AT&T found the information inadequate and not helpful.

NECA also failed to provide intrastate data.[14] Without the intrastate data, which the Commission expressly requested, the Commission will not be able to ascertain whether reasonable assignments of costs were made to the interstate jurisdiction in the development of NECA's rates for the 2004-2005 prospective period.

NECA, furthermore, did not fully address the Commission's concern with the inconsistency found in the requirement of a 12-month time-frame for true-ups of the Interstate Common Line Support and the 24-month true-up process for the NECA pools, as "both are presumably based on the same separations and cost studies."[15] NECA concludes that the "cost studies are completed within 7 to 12 months from the end of year, consistent with timeframes for

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[14] *See* Direct Case at 8. NECA's entire explanation for failing to do so is that supposedly it "does not collect or maintain intrastate earnings monitoring data and cannot respond to this portion of the Designation Order." This dismissive explanation is implausible on its face, but at the very least calls for some amplification rather than a cavalier disregard of the Commission's request.

[15] *Designated Order*, para. 23.

ICLS true-ups."[16] This being the case, if the ICLS true-ups can be completed within a 12-month time frame, why can't the same 12-month time-frame apply for the NECA pool true-ups?

It is well-established law that an adverse inference may be drawn when an interested party fails to cooperate by not acting to the best of its ability to comply with an agency's request for information.[17] NECA's failure to provide vast amounts of the requested information that is in its possession and control gives rise to an inference that the information it has failed to produce would not support its claims, but rather would further confirm the other record evidence that shows it has consistently overearned and will continue to do so unless its rates are adjusted.[18]

In all events, even NECA acknowledges (Direct Case at 4) that its earnings, as measured by its duly filed final Forms 492, have consistently exceeded its authorized return. NECA, however, claims that its earnings should not be assessed on the basis of the data in its final Forms 492, but rather on the basis of the later results it calculates after a 24-month true-up process. Direct Case at 9-10. NECA, however, provides no

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[16] Direct Case at 22.

[17] *In the Matter of James A. Kay, Jr.*, 13 F.C.C. Rcd. 16,369 [para. 11] (1998); citing *Ribando v. Silhoutte Optical, Ltd.*, 871 F. Supp. 675, 678 (S.D. N.Y. 1994); *Davis v. Northside Realty Associates, Inc.*, 95 F.R.D. 39, 45 (N.D. GA. 1982). *See also, Notice of Final Determination of Sales at Less than Fair Value; Stainless Steel Round Wire from Spain*, 64 FR 17323 (April 9, 1999).

[18] NECA (Direct Case at 8) also complains that the Commission has failed to request from NECA information about the "process and procedures actually used by NECA to forecast costs and demand and to calculate proposed rates." This complaint makes no sense. Presumably the Commission did not request this data because it has sufficient information as to NECA's actual methodologies and is not satisfied that they justify the filed rates. In all events, NECA should have justified its rates in its initial filing, but nothing prevents it from submitting any information it deems relevant to the lawfulness of its rates, even if the Commission has not specifically requested it here.

legal support for its bare assertion that the lawfulness of its earnings should be considered on the basis of the 24-month trued-up results rather than the final Forms 492.

The Commission's rules make clear that the final Form 492, filed by September 30th of the year following the two-year measuring period is the legally controlling measure of whether or not earnings are excessive. Section 65.600 (b) of the Commission's rules, 47 C.F.R § 65.600 (b), states that: "Final adjustments to the enforcement period report shall be made by September 30 of the year following the enforcement period to ensure that any refunds can be properly reflected in an annual access filing." And Section 65.701 of the Commission's rules, 47 C.F.R. § 65.701, specifies that, "For both exchange and interexchange carriers subject to this part, interstate earnings shall be measured over a two-year period to determine compliance with the maximum allowable rate of return." Hence, the data submitted on NECA's Forms 492 are legally controlling.

But even if the Commission gives credence to the NECA data, those data still fail to show that NECA has not consistently overearned. In its Petition (at 2-3 and Exhibit A) AT&T, using the official rate of return Forms 492 filed by NECA over 10 periods, showed that NECA's earnings were consistently in excess of 11.25% and determined that there was a systematic, statistically significant, difference between the targeted return that relies on NECA projections and the actual return that NECA reports. In short, AT&T showed that NECA's forecast errors are not the result of random error.[19]

[19] Direct Case at 10-14. NECA does note that its 2003 data would not be as complete as prior years. It appears that the 2003 result will be more accurate after it is trued-up in the 4th quarter of 2004.

NECA does not even attempt to refute the analysis AT&T submitted with its Petition. Rather, NECA has provided data that it believes should contain most of the true-ups for Local Switching Support (LSS) and for revisions to NECA participant cost studies.

Without conceding the appropriateness of NECA's adjustments, AT&T has conducted a similar analysis to that provided in its Petition using the adjustments submitted by NECA. As AT&T demonstrates in Attachment A, even using these adjusted earnings data, the results indicate that NECA's access rate projections still produce results that are biased, and that there is a high statistical likelihood that the rates will be excessive. See Attachment A.

III. NECA SHOULD BE REQUIRED TO MAKE MID-COURSE ADJUSTMENTS TO ITS RATES TO ACCOUNT FOR THE SUBSTANTIAL OVEREARNINGS THAT THIS INVESTIGATION CONFIRMS.

As AT&T showed in its Petition to reject or suspend the NECA tariff filing, and as the Commission recognized in its *Designation Order* (para. 11), the monitoring reports filed by NECA for the period ending December 31, 2003, which constitute the first year of the current 2003-2004 monitoring period, show that NECA achieved returns that substantially exceed the Commission-prescribed 11.25% rate-of-return. As the Commission stated:

> "Absent compelling reasons for forecasting significant changes in costs or demand going forward, we would have expected NECA to reduce its rates by approximately 10 percent, rather than to increase them by approximately 3.8 percent, in the July 1, 2004 annual access tariff filing in order to target an 11.25 percent rate of return." *Designation Order* (para. 11).

The data produced in this investigation confirm that NECA should be required to make downward adjustments to its rates for the 2004 period to bring its overall returns for the 2003-2004 period within the range of 11.25%.

As AT&T's Petition (at 6-7) explained, small variations in the rate-of-return LECs' earnings from the Commission-prescribed level are to be expected due to, among other things, forecast errors and changes in marketplace conditions. But large variations show that the LECs' data are unreliable, and require correction and that is precisely why the Commission requires interim monitoring reports. As explained by the Commission:

> "Rate-of-return carriers estimate their costs of providing exchange access services and project their demand for such services. They then file tariffs containing the rates for their access services that they believe reflects, given their estimates of costs and demand, will result in earnings within the prescribed rate of return at the end of the two year monitoring period. During the course of the two-year period, rate of return carriers must review how their *actual costs and demand calculations compare to their earlier projections, and make rate adjustments, if necessary, to ensure that they do not exceed their prescribed rate of return.*"[20]

The investigation confirms the need for a mid-course adjustment and correction of the bias in NECA's forecasts. The Commission should direct NECA to refile its rates accordingly or prescribe rates that reflect the appropriate adjustments, so that earnings for the 2003-2004 measuring period do not exceed the authorized return.

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[20] *In the Matter of General Communications Inc., Complainant, v. Alaska Communications, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications ATU Telecommunications d/b/a Anchorage Telephone Utility,* EB-00-MD-016, Memorandum Opinion and Order, 16 FCC Rcd. 2834, ¶ 5 (2001) ("*GCI v. ACS*") (emphasis added); *see In the Matter of Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, Report and Order*, 1 FCC Rcd. 952, 954, ¶ 10 (1986).

CONCLUSION

For the reasons stated above, the Commission should require NECA to adjust its rates so that they are properly targeted to earn at the duly authorized rate of return for the 2003-2004 period of review.

Respectfully submitted,

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Attachment A

Statistical Processes Used to Test for Bias in NECA Projections

AT&T conducted three analyses of the relationship between NECA's projected rates of return and NECA's actual rate of return using the traffic sensitive (switched) rate of return data NECA provided in its Direct Case Exhibit 2[1]. These analyses, outlined below indicate that the NECA rate development process consistently produces rates of return that exceed the targeted rate of return.

AT&T first graphed the differences between the projected annual rate of return and the most recent final rate of return reported by NECA on its Direct Case Exhibit 2 for the Interstate Traffic Sensitive (SW) Category.[2] A simple visual look at the data clearly indicates that NECA consistently generated returns that exceed 11.25%. (*See* Exhibit A-1, attached). This visual test is also used to determine whether additional statistical tests are necessary. The additional tests outlined below, test whether it is likely that NECA's projected revenue requirement would consistently achieve returns greater than 11.25%.

The first test is intended to evaluate whether NECA's rate of return projections are unbiased. An unbiased rate development process would be expected to produce returns that are both above and below the target return, which is 11.25%. This initial test evaluates the likelihood that a set of forecasts would be expected to consistently exceed or under estimate an actual level. NECA has under forecast its switched rate of return

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[1] NECA Direct Case-WC Docket No. 04-372, filed October 12, 2004. Exhibit 2.

[2] NECA Direct Case-WC Docket No. 04-372, filed October 12, 2004. Exhibit 2. The data for years prior to 2001 are labeled by NECA as the "Final" result for the specific year. For example, the return used for the year ending 1999 is found under the Traffic-Sensitive (SW) Rate of Return Column on the line labeled "Final 1999 Amounts" and is 12.72%. For years after 2001 the data is taken from the line labeled "Most Recent" for the year in question. To illustrative, the 2003 return taken from the Traffic-Sensitive (SW) Rate of Return Column on the line labeled "Most Recent 2003 Amounts" is (15.142%).

over all of the 11 periods for which it provided Traffic Sensitive (SW) data. This result indicates that NECA produced returns that exceeded the target rate more years than chance would reasonably allow.[3] The probability that a LEC would set its rates to exceed the target rate 11 periods in a row is (½)^11. The probability that an unbiased process, that is, one that would produce rates of return on the average at the 11.25% target is only (1/2)^11, or .049% as shown on Exhibit A-2.

To better understand the forecast bias and to derive an estimate of the expected bias AT&T also tested the difference of the means. Specifically, AT&T looked at the differences between the actual rates of return and the targeted rate. In the absence of bias these differences should not statistically differ from zero. The test hypothesis is that the average difference between two means is zero. The t-statistic calculated from the sample data can then be compared to the critical value of the one tailed t-distribution at, for example the 90% or 95% confidence levels.[4] If the calculated t-statistic exceeds a

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[3] For a review of this test, commonly referred to as a sign test, consult a basic statistics text. In addition there are a number of sources that describe the test on the world wide web.

[4] The t-test is performed on the differences between the observed rates of return and the target return, these differences are denoted d_i. The average of the differences, D, and then the standard deviation of the average, s_D, are found. The standard deviation of the average differences is found by first calculating the standard deviation of the differences,

$$s_d = \sqrt{\sum(di - D) / (n-1)} ,$$

and then calculating the corresponding standard deviation of the average of the differences, s_D,

$$s_D = s_d/\sqrt{n} ,$$

The t-statistic is calculated using the formula, This statistic is compared to the statistical t-distribution with degrees of freedom equal to the number of observation minus 1.

$$t = D / s_D .$$

The calculated value of the statistic is then compared to the statistical t-distribution with degrees of freedom equal to the number of observations minus 1. AT&T in this instance has compared the calculated t-statistic to the critical value at the 95% level of confidence.

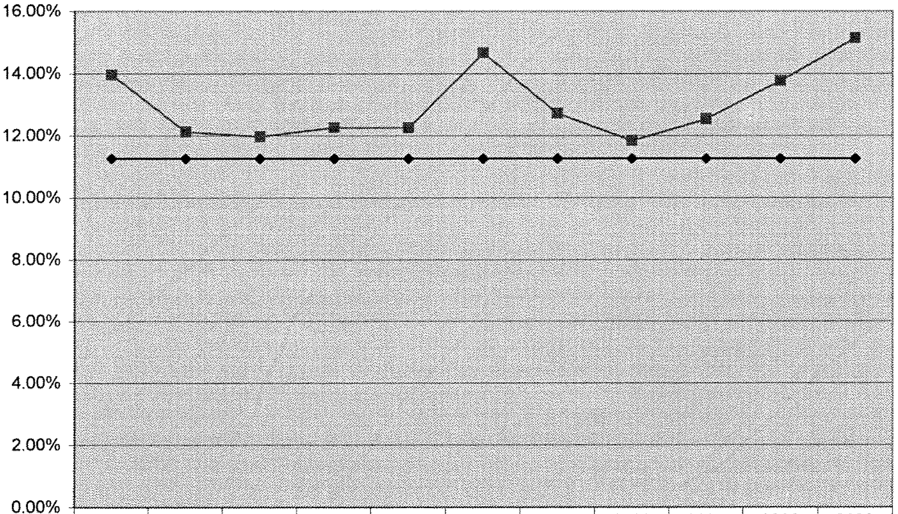
critical value then bias is likely with the probability of the confidence interval. As shown in Exhibit A-2, the calculated value of the t-statistic exceeds the critical values at the 95% level of confidence. This indicates that NECA has a systematic upward bias in their projection process.

The t-tests provide a formal statistical confirmation of the visual view that NECA consistently develops projected returns that exceed the authorized level. Further the t-test also strengthens the evidence the resulting from the simple test on the direction (over or under) of NECA's projected rates of return.

Exhibit A-1

NECA Traffic Sensitive Rate-of-Return

(Direct Case Exhibit 2 data)



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Traffic Sensitive Return	13.96	12.12	11.97	12.27	12.26	14.67	12.72	11.83	12.53	13.76	15.14
Target	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25

Exhibit A-2

Projection Bias
NECA Rate of Return
Switched Access

	Test 1				Test 2				
A Company	B # of Observations	C # of Observations < 11.25%	D Probability of (# Observed in Column C) of Less < 11.25%		E Average Rate of Return	F Standard Deviation of the Average Rate of Return	G Calculated t-statistic	H Critical t-statistic at 95% Confidence Level	I Significant Outlier
NECA	11	# < 0	0.0488%		13.02%	0.011596	5.065026	1.812	Yes

NOTES: Column D is the probability that the number of actual observations will be less than 0.
NECA has no observation less than 11.25 the probability that NECA would not observe any return less than 11.25% is given by the equation:

Pr(0 (I.e. No observations < 0) = ∑ (11^i) (0.5)^11 =1*(.5)^11= 1 / 2048 = 0.0004883.

Where the sum runs from i = 0 to 0.

Column E is the simple average of a LECs rate of return. The average is derived by simply summing the Switched Access return identified for each observartion and dividing by the number of observations.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2004, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to Direct Case to be served on all parties by electronic mail, telecopier and mailing, postage prepaid to their addresses listed below.

Dated: October 22, 2004
Washington, D.C.

/s/ Mart Vaarsi
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